UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

CUNG LE, ET AL.,	)	**CASE NO: 2:15-CV-1045-RFB-PAL**
	)	
Plaintiffs,	)	**CIVIL**
	)	
vs.	)	**Las Vegas, Nevada**
	)	
ZUFFA, LLC.,	)	**Wednesday, September 30, 2015**
	)	**(2:02 p.m. to 2:48 p.m.)**
Defendant.	)	

STATUS CONFERENCE

BEFORE THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

Appearances:	**See Next Page**
Court Reporter:	**Recorded; Liberty**
Courtroom Administrator:	**Jeff Miller**
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APPEARANCES FOR:

Plaintiffs:

DON SPRINGMEYER, ESQ.
Wolf Rifkin Shapiro Schulman & Rabkin, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234

MICHAEL C. DELL'ANGELO, ESQ.
1622 Locust Street
Philadelphia, PA 19103

BENJAMIN D. BROWN, ESQ.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, NW,
Suite 500 West
Washington, DC 20005

MATTHEW S. WEILER, ESQ.
The Joseph Saveri Law Firm, Inc.
555 Montgomery Street, Suite 1210
San Francisco, CA 94111

ROBERT MAYSEY, ESQ.
Warner Angle Hallam Jackson Formanek, PLC
2555 E. Camelback Road
Suite 800
Phoenix, AZ 85016

Defendant:

JOHN F. COVE, JR., ESQ.
Boies Schiller & Flexner, LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612

MARCY N. LYNCH, ESQ.
Boies Schiller & Flexner, LLP
121 S. Orange Avenue, Suite 840
Orlando, FL 32801

PHILIP R. ERWIN, ESQ.
Campbell & Williams
700 S. Seventh Street
Las Vegas, NV 89101

Las Vegas, Nevada; Wednesday, September 30, 2015; 2:02 p.m.

(Call to Order)

THE CLERK: All rise.

THE COURT: Good afternoon. Please be seated.

COUNSEL: Good afternoon, your Honor.

THE CLERK: Your Honor, we are now calling the status conference in the matter of *Le versus Zuffa, LLC*. The case number is 2:15-cv-1045-RFB-PAL.

Beginning with plaintiffs' counsel, Counsel, please state your names for the record.

MR. SPRINGMEYER: Good afternoon, your Honor. Don Springmeyer, Wolf Rifkin, for plaintiffs.

MR. BROWN: Benjamin Brown, Cohen Milstein, for plaintiffs.

MR. DELL'ANGELO: Michael Dell'Angelo of Berger and Montague on behalf of plaintiffs.

MR. COVE: Good afternoon, your Honor. John Cove, Boies, Schiller and Flexner, for Zuffa, LLC.

MS. LYNCH: Good afternoon. Marcy Lynch, Boies, Schiller and Flexner, for Zuffa, LLC.

MR. ERWIN: Phil Erwin, Campbell and Williams, on behalf of Zuffa, LLC.

MR. HENDRICK: Good afternoon, your Honor. Kirk Hendrick, Chief Legal Officer for UFC.

THE COURT: We're here for a status conference, and

you folks have now had an opportunity to mull over Judge Boulware's decisions with respect to the dispositive motion that has been filed. I have read your joint status report and the parties' proposed competing forms of protective order in this case, so let me ask -- just initially I'm going to take oral argument on the issue with respect to the only disputed provision of the proposed form of protective orders, which is the highly confidential, attorneys' eyes only issue, and then I'll take up the more specific issues with respect to document production and ESI and so forth. I understand Judge Boulware approved your ESI protocol. He deferred the decision about the motion for protective order to me, and he's indicated just generally, for whatever value it's worth to you, that his intention is to defer most case management and discovery-related matters to me. He intends to take up those matters that he knows he's going to get one way or the other. So, for whatever value that provides you moving forward.

Let me hear first from the parties concerning the proposed form of order and arguments concerning the propriety or lack thereof of a attorneys' eyes only provision starting with the moving parties' request for that provision. Mr. Cove?

MR. COVE: Yes. Thank you, your Honor.

Two-tiered protective orders that protect the parties' most sensitive and highly confidential information, anti-trust litigation, are routine in anti-trust litigation.

Courts don't want discovery to be used for the purposes -- for purposes outside the litigation and are very concerned about inadvertent disclosure. As the *Deutsche Bank* case said:

> "It is very difficult for the human mind to compartmentalize and selectively suppress information once learned no matter how well-intentioned the effort to do so may be."

Now, here there were two issues when we began, and one was the issue of attorneys who represented fighters in the normal course of business and negotiations with Zuffa, and the other is Mr. Maysey, who is the promoter, creator, founder of the Mixed Martial Arts Fighter Association.

The first issue has essentially been resolved. The attorney who acted as a representative in negotiating contracts has agreed to be firewalled from this litigation, and the parties don't really have a dispute about that. So, the issue, then, is Mr. Maysey.

THE COURT: And with respect to that issue, the parties have an agreement in principle that attorneys who represent fighters who -- in various stages, and whether they're contract or sponsorship or merchandising agreements and so forth, that an attorney who has actually represented should not have access to information about whether the fighters --

MR. COVE: And I think it might be a little broad to describe it as an agreement in principle. There was a specific

individual who performs that role, who is a partner of Mr. Springmeyer's.

THE COURT: Correct. And I understand that.

MR. COVE: Yeah.

THE COURT: And, then, there are exchanges back and forth about what he did or did not do, and now I want to probe with you whether or not you have an agreement with respect to a principle or just that individual.

MR. COVE: I believe it is just that individual, and that's what we -- that's why we require that two-tier protective order that we've -- that we've established.

THE COURT: Very well. So --

MR. COVE: We -- we don't have any other individuals in mind who are in that -- who are similarly situated, and I don't think Mr. Tabachnick, who is Mr. Springmeyer's partner, presents any -- any controversy right now.

So, the issue, then, is Mr. Maysey. Mr. Maysey, as I said, he is the -- the creator, the promoter, and the driving force behind the Mixed Martial Arts Fighters Association. His stated ambition for this entity, among others, is to have it serve as a group licenser for MMA fighters in direct -- which would be in direct competition with Zuffa for those licensing rights. Irrespective of --

THE COURT: You don't license rights for fighters, do you? You license rights in your own accord?

MR. COVE: We -- Zuffa licenses, in order to put on the bouts and promote the bouts, obtains contractually the licenses -- the rights to use fighters' name, likeness, and so forth in connection with that. And, then, there are third parties, such as sponsors or merchandisers Zuffa works with to license its brand and the fighters -- with the fighters to --

THE COURT: Their identities.

MR. COVE: Their identities. Right. So, if a sponsor, say, Reebok, pays a certain amount of money for people to wear their Reebok uniform in the competition, the fighters will get a certain amount of that revenue.

THE COURT: Correct. That's one of the things the plaintiffs are complaining about --

MR. COVE: Right.

THE COURT: -- is that you have this arrangement, and they also say you engaged in a series of other conduct that prohibits the fighter from independently going out and -- although he has to wear the team uniform, as it were -- prohibiting the fighter from obtaining outside sponsorships not related to the bout for which a contract is -- contractual right is provided to you.

MR. COVE: That is their contention. We disagree with it as a fact. But -- but -- and I'm glad to explain that if you'd like, if you want me to go --

THE COURT: No; I know you disagree with that. I'm

just trying to --

MR. COVE: Yes.

THE COURT: -- hone out what you're talking about. You agree that you have contractual rights to the fighters' identities for purposes of commercializing your opportunities.

MR. COVE: In connection with the UFC activities. The fighters can go out on their own when they're not involved in UFC activities without the UFC name and brand and license their identities --

THE COURT: So, what is the risk of harm to you if you have a binding and valid contractual obligation with the fighters with respect to individual bouts for disclosure of information that pertains to activities that you acknowledge they could engage in lawfully and permissibly if they want to?

MR. COVE: Well, they're -- they are a competitor in -- in doing that.

THE COURT: How so?

MR. COVE: Because --

THE COURT: You only compete in -- in the events, correct? Not in the --

MR. COVE: Well, no, the sponsors -- we're competing for the -- for the sponsors. The sponsors can sponsor -- choose to have a deal with Zuffa or it can choose to make other independent deals.

THE COURT: Why would any sponsor want to deal with

Zuffa and a fighter independently when Zuffa has an agreement with a fighter to -- that obligates the fighter?

MR. COVE: Because it's -- they can have -- have the fighter engage in much broader activities in support of their brand. So, if -- if, you know -- Reebok, for example, they have the uniform that -- they provide the uniform that the fighters compete in in the Octagon. If they want to have one of these people go out and promote their brand some other way, they can reach a separate agreement to do that with them.

THE COURT: Correct, but how is that --

MR. COVE: They can and do.

THE COURT: But how does that compete with you?

MR. COVE: Well, that activity, per se, is not -- when an individual fighter who -- who has a deal with us makes another deal with a --

THE COURT: With your same sponsor.

MR. COVE: -- with a sponsor, it --

THE COURT: For something that you're not engaged in.

MR. COVE: Right. It's -- it could still compete because the sponsor has a limited amount of money and has to decide where it's going to spend that money and what's most effective. And if -- what Mr. Maysey's ambition to do, as he's articulated in the materials that we cite, is to get a group of people together and license those rights, you know, as -- as a group to -- to whomever. And, so, that would be a competitive

activity. The sponsor would have to decide whether they wanted to -- wanted to contract with UFC or with --

THE COURT: Well, there's only so much of the piece of the pie. But what you have a contractual agreement with your fighter was, is that you're going to use his identity for a certain bout, and all you're telling me is that if Reebok only wants to spend a million and they spend a half a million with you, and you -- you don't want the fighter to engage in other alternatives to Reebok that cut into your piece?

MR. COVE: No. It's -- it's not them wanting to; it's just they are -- they are a competitor, and -- and, you know, this -- this is -- this is --

THE COURT: Well, competitor in a sense they're a competitor of the total piece of the pie that Reebok might decide to devote to advertising. They're not a competitor to you with respect to the exclusive rights you already have with the fighter, right?

MR. COVE: Well, once -- once they're contracted for, the fighter can't sell them twice, but those contracts come up --

THE COURT: Correct.

MR. COVE: -- and they will have to compete again. Let -- let me step back for a second, because there is a broad --

THE COURT: I'm really trying to understand your

competition argument.

MR. COVE: All right. There is a broader aspect of this, which is that Zuffa, UFC, is competing for fighters with other promoters, such as Bellator and so forth. And the Reebok deal is part of what they offer to fighters, and it restricts the fighters from other things they could do in the Octagon with sponsors with regard to other competitors. So, Bellator, for example, is using the Reebok deal to say, you know, "Come to us, because you'll be able to make more money with sponsors in addition to what we're paying you." So, it's a --

THE COURT: Because they'll pay a bigger piece of the pie of the Reebok deal to the fighter? Or --

MR. COVE: Because the -- because the individuals have more of an opportunity to do their own sponsorship deals where those -- that sponsored clothing into their -- into the Bellator ring, into the competitive space, and have the sponsors be on TV, whereas Zuffa has only Reebok uniforms in the -- in the Octagon these days. So --

THE COURT: Okay. So --

MR. COVE: Some -- some --

THE COURT: So, Zuffa only allows, as an example, a Reebok logo on a uniform, but Bellator would permit the fighter to put a Reebok and a Nike --

MR. COVE: Yeah. It wouldn't be Reebok. But it would -- it would be any -- anybody else if they -- if they

could sell Nike or if they could sell, you know, batteries or cell phones or Monster drinks, whatever; whatever the fighter can convince a sponsor to pay for and get that exposure on TV by wearing it in the ring. Zuffa has -- has reached --

THE COURT: It -- they could be a walking billboard, yes.

MR. COVE: Right. So --

THE COURT: And you don't allow that.

MR. COVE: Yeah. So, we -- so, there has been a change in the business model over the last few years, and this is the business model that Zuffa's chosen to go through one sponsor; the fighters are paid according to the number of fights that they've had, paid from the Reebok money -- the Reebok money that comes in. They're paid according to the number of fights they've had, a certain amount. And some of them say it's a better deal for some, it's a worse deal for others, compared to what they could make, they say, based on freely offering their sponsorship rights to others. And that's an aspect which the president of Bellator has publicly stated many times; I am encouraging people to come to me; you can make more money with licensing, because of the Reebok deal. So, that's -- it goes to show that there's a lot of competition on a lot of metrics in this industry and it's --

THE COURT: So --

MR. COVE: -- not correct to -- to isolate, you know,

one licensing right or another licensing right.

THE COURT: How would a fighter who's contracted with you gain a competitive advantage by knowing about what your deal with Reebok is in dealing with Bellafor (sic) or anybody else that wants to give him a -- exposure to other opportunities?

MR. COVE: Well, it's not just the deal itself, but it's all of the confidential information that could be --

THE COURT: So, tell me what that is.

MR. COVE: Well, there are costs; there are revenue streams; there are strategies as to how they will approach new sponsorship opportunities, new merchandise oppor- --

THE COURT: "They" being who?

MR. COVE: Zuffa. Zuffa is continually looking for new sponsorship opportunity and new merchandise opportunities, new ways to market its product, to popularize its product. All these things are competitive strategies that it would harm Zuffa if they were disclosed. And, you know, in a price-fixing litigation, say you have a -- buyers are suing a group of sellers for -- for price fixing. The sellers can't have access -- typically, under a two-tier protective order -- cannot get access to the competitively -- business counsel for the buyers I should -- or the sellers I should say; they can't get competitively sensitive information about their competing sellers, but they also are barred from getting the

competitively sensitive information from the buyers, with whom they have a -- a vertical relationship and aren't really competing.

THE COURT: So, who are the buyers and sellers as between you and the fighters for purposes of your assertions?

MR. COVE: Well, we're -- we're a little different here in that they are the sellers of the services.

THE COURT: That's why I'm having a hard time --

MR. COVE: Yeah.

THE COURT: -- following your --

MR. COVE: Well, I think the principle is the same. You could have a monopoly case where the sellers are colluding or you could have a monopsony case where the -- excuse me -- yeah, a monopsony case where the sellers -- monopoly case where the sellers are colluding or a monopsony case where the buyers are colluding, agreeing not to compete for certain products, for example, or agreeing not to pay more than a certain price. That would be price fixing on the -- on the monopsonization side. But the principle is the same, that if the seller -- there is no reason the -- the seller could be harmed if the buyer learns about all of its highly competitive, sensitive information, and the seller could be harmed if the buyer learns about it. I don't think there is a major distinction here, and that's -- that's the problem we have here, that both, you know, the MMAFA, as a horizontal competitor for licensing, and

Mr. Maysey's activities in -- in representing and advising fighters with regard to their negotiations with -- with -- with Zuffa.

You know, the plaintiffs used the example of a union in their papers that -- and I think it's actually an apt example. If U.S. Steel were sued for some anti-trust violation, the chief labor negotiator for U.S. Steel unions wouldn't be entitled to every -- to use every piece of information that they -- that was subject to discovery in the anti-trust litigation. Now, here there is no collective bargaining, and there is no indication that Mr. Maysey represents, you know -- is going to do that, but that's clearly his ambition, and both as a collective bargainer and his current practice now with regard to fighters. So, therefore, we feel that that risk, that knowledge -- and it's not our -- you know, as the Court said in MyConn (phonetic):

> "Even if they act in best of faith in accordance with the highest ethical standards, the question remains whether the confidential information would create an unacceptable opportunity for inadvertent disclosure."

And here we think that it would.

I think it's important to remember here that there is a challenge procedure. The plaintiffs feel strongly about this. If anything is overdesignated and is impeding their ability to -- to prosecute this case, they can come to us first

and under -- under our proposed limited protective order, and if they don't get satisfaction, they can come back here. And that's a major incentive for us to be as judicious and as careful as possible in only designating the things that are truly highly confidential and that could cause competitive harm. And if --

THE COURT: How do you propose that the Court enforce the description of agents or one of the agents for -- your language is more articulate than that, but that's what it says.

MR. COVE: Well, there is a limited universe of people who are going to be exposed to confidential information of any sort under the protective order, and I think it's the plaintiffs' obligation, if they have people who fall within that category, to make a determination whether they're in that category, and if there is any question about it, we can -- I mean, we don't know who they're going to have reviewing documents and so forth, and we're not going to regulate that, but if there is a question they can bring it -- bring it to us or bring it to the Court's attention. I mean, there's a lot of ways to work out these things in a -- in a litigation. You know, I have -- I've been in cases where the in-house counsel really wanted to see the expert report that contained highly sensitive information and otherwise wouldn't be able to, and counsel were able to work out arrangements; okay, you know, "We'll redact this part of the sensitive information and we'll

give you -- we'll make sure that your client can do his job -- his or her job." And, you know, that's -- that's the kind of thing that could -- could happen here as well. But to just leave the floodgates open and the most highly confidential, the most highly sensitive information here --

THE COURT: Well, the -- the floodgates aren't open. It still can be designated as confidential. It's the restriction on who gets access and for what purpose that you're concerned about.

MR. COVE: That's -- that's correct. I overstated my points with the "floodgates" comment, but I think -- I think that, you know, there are ways to work these things out, and, obviously, when we come to the point of summary judgment in trial we know that you and other courts are very concerned about the sealing of material that shouldn't be in the public, and --

THE COURT: Well, compliance with the *Kamakana* decision and the presumption of public access.

MR. COVE: Sure. Of course. And, you know, we've tried a variety -- in previous cases we've met and conferred and worked out a variety of mechanisms to address those issues. So, I don't think this has to be a major issue here. We just need the ability to protect the most highly sensitive, confidential information from disclosure.

And, you know, the last point I'll make is that there

is really no showing here that there can be -- is or will be any harm to the plaintiffs' ability to prosecute this case. They have -- they moved for appointment of --

THE COURT: Yes, of course, but that turns the burden on its head. The burden is on you to establish the justification for the protection.

MR. COVE: Understood. But I think we -- we've done that, and at that point it becomes a balancing, a balancing test. And Mr. Hendrick's declaration that we've submitted, you know, provides an evidentiary basis for this. It's hard to, sitting here today, detail every specific piece of information that could cause competitive harm, but there is -- there is a lot of it. I mean, this is a very dynamic industry. They are thinking creatively about how to do new things, and as are their competitors, and having that information not as tightly controlled as possible just because an anti-trust lawsuit has been filed I don't think is -- is -- serves justice.

And I don't think that they will be prejudiced in prosecuting this case in any way. They have -- they moved for the appointment of four law firms as interim counsel. All those law firms are very qualified, as reflected by their papers. There's 17 lawyers, I think. So, there is really no indication that this will not allow them to prosecute the case fully and vigorously, and if they have a problem with it, there is a procedure that they can take that will be effective that

serves as a check on us right now, because I don't want to be here, you know, in two or three months trying to justify something -- you know, a designation that is not justifiable. So, I -- I think this is the most reasonable solution. It's not -- it's kind of an unusual -- Mr. Maysey's position is a little bit unusual. It's not like a typical in-house counsel position where this decision is relatively routine, but I think the same principle should apply here and that we should get this protection.

THE COURT: Thank you, Mr. Cove.

Who will be arguing from the plaintiffs' point of view?

MR. DELL'ANGELO: Michael Dell'Angelo, your Honor.

(Pause)

MR. DELL'ANGELO: Good afternoon, your Honor. Michael Dell'Angelo.

So, there -- there are a few kind of 10,000-foot-view items that I'd like to address, but I'll get to those in a moment, and I'd like to kind of jump right in with -- on something that Mr. Cove said. And toward the end of this presentation what he said is that it is difficult to detail every piece of evidence of potential competition that may necessitate the entry of a highly confidential designation here. And that's -- it's a telling statement, because when you look at the filings that Zuffa has made, the declaration of

Mr. Hendrick in support, and the materials that they provided, we submit, your Honor, that there is actually not a single piece of evidence that Zuffa has presented that meets the burden that they're required to make.

The burden for a highly confidential designation, your Honor, requires an actual showing of harm. And there has to be competition for that to happen. And the showing of competition and actual harm requires specific facts. And what we haven't seen here is a single specific fact. All right. So, the founding of the MMAFA goes back almost 10 years. And looking through the record, UFC or Zuffa cannot present a single instance of potential competition or actual competition between the two.

And, so, what we heard are --

THE COURT: Well, are you saying that your fighters are potential competitors and the pool of money that's available for sponsors (indiscernible)?

MR. DELL'ANGELO: So, your Honor, the -- the designation that Zuffa is seeking really falls into -- there are three separate designations. So, the first is just the plaintiffs themselves. So, what Zuffa is saying is that the plaintiffs should not be entitled to see any highly confidential information. But in their papers what they haven't done, and in Mr. Hendrick declaration what they haven't done, is presented a single instance or piece of evidence that

supports competition between the two. I think what you heard from Mr. Cove is some things we haven't heard before today, which suggests that that competition is possible, but none of it meets the showing that there is actual competition that would result in a direct harm to the UFC. There is simply none.

I mean, and the same is true with respect to the second tier that the UFC has proposed, which is excluding the availability of highly confidential information from agents as well. Again, looking through their papers and their entire submission, they don't even really say directly that there is reason to believe that anyone who is -- and if you look at the language, which they've done, it's incredibly over broad. It's anyone who anticipates being an agent for any athlete in any sport should be precluded from seeing this material. But, again, what they don't do is provide a single instance of -- you know, or a specific fact to suggest that there is any actual harm that would result from the disclosure of what they'd like to characterize as highly confidential information.

So, and, you know, that kind of addresses sort of a larger issue with respect to a highly confidential designation that they're proposing here. It's incredibly broad, and it lacks the specificity that such designation should have. And if you go through the language, it -- I think it suggests that there is a high degree of likelihood that there will be over

designation. And, you know, the cases that look at this --

THE COURT: Well, Counsel has just assured me that they have no intention of doing that, because they know you have a mechanism to bring it to me, and nobody wants to be called on the carpet for over designating materials.

MR. DELL'ANGELO: Well, I understand that representation, but, your Honor, the cases that have looked at this -- and *Dysthe*, the basic research out of the Central District of California, one of the cases that we cite, talks about this -- is that there should be extremely well-defined reasons and the scope of the highly confidential designation should be narrowly tailored so that everybody knows what they're talking about. And what's interesting is, if you look at that *Dysthe* decision, on pages four to five, the language in that opinion cites the proposed highly confidential language that was rejected by the Court in that case, and it's verbatim, almost identical, to the language that we're seeing here. So, while I recognize the representation of counsel, and I appreciate they would try to do that, I think the risk is high. That said, Section 7.1 of the proposed protective order, which both parties have agreed to, provides that no recipient of the material designated as confidential or otherwise is permitted to use it for any purpose other than this litigation. So, the fact that one can challenge and that they might not over designate, in a way, puts the cart before the horse. I mean,

really, the question is, should it be designated as highly confidential at all. And I submit that it shouldn't unless Zuffa has made the appropriate showing, which it hasn't.

So, particularly with respect to the MMAFA and Mr. -- Mr. Maysey, what the -- what Zuffa hasn't done is demonstrate why the MMAFA is actually a competitor of the UFC. And there are sort of myriad reasons why that assertion doesn't hold. I mean, it's a -- it's a bald assotion -- assertion, rather, which is -- and I think Mr. -- Mr. Cove used the word that it's their "ambition" to compete and that there is no collective bargaining. But even if one assumes that it's the ambition of the MMAFA to compete in this market, the question is, are they even competing over the same things. And it's impossible to know, because, again, in 10 years of the existence of the MMAFA, we haven't seen a single instance of actual competition. I mean, they can't point to a single one.

Which gets us to the next issue; Mr. Maysey, more specifically. What Zuffa concedes and the cases are clear about is that he would have to be a competitive decision-maker in order to be excluded. And he's not. Again, it doesn't meet the test. That would mean that he'd have to direct decisions. He'd have to make decisions about competitive conduct that the MMAFA is engaging in. But, you know, you have this problem where the MMAFA is not engaging in any competitive conduct. But even if it were, Mr. Maysey absolutely is the founder, but

there's -- he hasn't engaged any competitive conduct, and there's -- there is none to point to.

But even if you accept everything that Zuffa has said with respect to competition, you're right, your Honor, to seize on the shifting of the burden here, because there -- there is a balancing that has to happen. And I think balancing weighs strongly in favor of striking down or not affording the defendants the highly confidential designation that they seek. And the reason for that is that Mr. Maysey is an industry expert. He's the choice of counsel -- excuse me -- the choice of the plaintiffs in this case. He's an important piece of the counsel picture here. And what -- what Zuffa has said in their papers, and I think what you heard, is that there are plenty of lawyers who can look at the documents. But anybody who has litigated a case knows that looking at documents is just a small subset of what happens in the case. The highly confidential designation here would have the effect of excluding Mr. Maysey entirely from the case. He couldn't participate in communications with clients where confidential -- highly confidential documents are discussed. He couldn't prepare for a deposition; couldn't take a deposition; couldn't participate in the preparation of class certification brief or motion for summary judgment if it was going to use those materials. I mean, if we were looking at those materials today in connection with another hearing, he

wouldn’t even be permitted in the courtroom. And, then, in theory -- I mean, I understand that there are workarounds for this, but as it's drafted, he wouldn't even be permitted to participate in the trial of this case.

So, in effect, what you do is, by entering the highly confidential designation, is you -- you exclude him entirely from the case. And, so, you deprive the plaintiffs of their choice of counsel; you've deprived them of the opportunity to see documents about what -- what the case is about, when you haven't established that they're competitors in the first place; and then you run into -- to another issue. Not only do you -- do you undermine the choice of counsel that the plaintiffs have made, but this is not just your standard party-on-party case. It's class action. And under Rule 23, the representative plaintiffs have certain obligations that are heightened because they, in effect, are acting on behalf of all the absent class members. So, they have to be making decisions about the case on behalf of -- of others. And if their primary counsel liaison can't look at documents, and they can't look at documents, you know, how can they reliably discharge their duties as class members on behalf of the class?

So, I think -- think what you have here is a highly confidential designation that is exceedingly broad and doesn't meet any of the tests with respect to the factual showing that's necessary and has a -- a real chilling effect on the

case, and, on balance, there really isn't an adequate workaround for the involvement of somebody like Mr. Maysey, who is not a competitive decision-maker and is not competing with Zuffa.

THE COURT: Thank you.

Counsel, I'm going to move on, because we have a lot of ground to cover with respect to the discovery and the document productions in this case, but I am going to find that the defendant has not met its burden of establishing a need for the highly confidential, attorneys' eyes only designation in this case, and I will, therefore, adopt the proposed form of protective order without that designation. May counsel please submit the proposed stipulation with the appropriate signatures consistent with that decision?

Mr. Cove?

MR. COVE: I -- thank you, your Honor. I -- I heard you rule. I'm standing up for the next matter.

THE COURT: That's fine. I didn't know if you had something to --

MR. COVE: I'd be glad -- I'd be -- if you want to hear more, I -- I have more to say, but --

THE COURT: No, I don't usually allow argument after I've ruled, but every once in a while someone --

MR. COVE: I -- I assumed as much.

THE COURT: -- needs a clarification.

So, let me turn now to -- you've had a few days to react to Judge Boulware's decision with respect to the motion to dismiss, and what, if any, ongoing discussions have you had to get the discovery process under way?

MR. DELL'ANGELO: So, your Honor, this --

(Pause; voices and whispers off the record)

THE COURT: Mr. Dell'Angelo and Mr. Cove, go ahead, and why don't you make nice and stand at the same podium. How's that?

MR. DELL'ANGELO: So -- so, we discussed this matter this morning, your Honor, and I think we have a shared view that we would like to present to the Court.

THE COURT: Excellent.

MR. DELL'ANGELO: Which is, the status that we put together jointly at Docket 185 was largely put together with the expectation that there would be some phasing that would be dependent upon the outcome of the motion to dismiss. And now that we have that decision, which, you know, we're -- we're certainly pleased with on our side, we think that there is some more thinking that needs to go into the proposal, and what we would like to do is spend a little bit of time with the defendants, continuing to meet and confer, refining our proposal, and then provide you with a joint status that indicates where we have come out, and also, to the extent that there are matters on which we do not agree, present them to you

as well, and in as short a time frame as possible have a follow-up status.

Now, to be fair, you know, it was our hope that we could do that in a couple weeks. I understand Mr. Cove was thinking about a longer time frame, like a month, but that's sort of the general thinking that we had, and we'd also like to use that time to develop a schedule that we, hopefully, can jointly agree on. We had -- that process was actually started earlier in the case. We would like to resume that process now that we have a decision on the motion to dismiss --

THE COURT: Right.

MR. DELL'ANGELO: -- and, hopefully present that to you as well --

THE COURT: All right. Mr. Cove?

MR. COVE: Yes. I -- I, basically, agree with Mr. Dell'Angelo. I want to make clear that we, you know, have been proceeding diligently on discovery with the -- and we have reached some agreements on some things, and we expect -- Zuffa expects to make a -- a pretty major production sometime in October. We have not been -- it wasn't like we just discussed it this morning. We have been discussing it.

THE COURT: No, I understand that.

MR. COVE: For quite some time, and I --

THE COURT: And you said you were going to be collecting --

MR. COVE: Yeah.

THE COURT: -- materials in the meantime, not with --

MR. COVE: Yes. So, we -- I definitely believe that additional meeting and conferring will be productive. I think a month is a more realistic time frame, because we would have to get the report in a week in advance of that, in any event, so that's -- that's our position.

THE COURT: Have you talked about -- I know one of the issues that was raised that stood out when I was reading your joint status report is the need to redact personal identifiers. Do you really feel strongly that you need to undertake that effort as opposed to impose on the receiving party the burden of complying with Rule 5.1?

MR. COVE: I hate to mention this, your Honor, but there was a -- there was a error in the Northern District of California on that, so we're very sensitive on that point. But I think we can talk to them about it. I -- I -- their --

THE COURT: I'll just tell you the U.S. Attorney's office in this district, when we have white-collar crime and bank fraud and wire fraud claim, they agree to produce documents to defense counsel under a protective order without redacting the information to expedite discovery review. I appreciate whether that gets everybody's panties in a knot, but that means there is hell to pay if whoever discloses something that shouldn’t be disclosed occurs --

MR. COVE: Yes.

THE COURT: -- and no one wants to see that happen. The question is whether or not you can reach an accommodation that doesn't involve the busy work of redaction.

MR. COVE: I'm certainly willing to talk about it with them, and, obviously, I would have to run that by my client as well.

THE COURT: Of course. Of course.

MR. COVE: And we have privilege issues on some of it, you know. The -- the contract files, which are one of the things that we proposed, really core documents that we proposed in phase one --

THE COURT: Sure.

MR. COVE: -- that we're pushing forward on, they are privilege intensive. They have a lot of counsel stuff in them, and it's going to take a substantial amount of time and effort to push through privilege review in any event. So --

THE COURT: Are you going to be able to screen potential privileged documents by custodians? In other words, do you have a limited number of lawyers that would have been involved, or do you have the problem of, "Our lawyers told us the category of documents"?

MR. COVE: Well, I think one of -- one of the things we agreed to prioritize first was the contract files that are maintained for each fighter. And they would contain the

contracts, the extension letters, things the fighter received that aren't privileged. It might include some non-privileged internal stuff, and it would also, in many cases, include advice to counsel in those files relating to the contracts. So, they're hard copy. Those are hard-copy contracts, so they have to be --

THE COURT: Manually reviewed, yeah.

MR. COVE: -- manually reviewed, which is, I think, quite a burden, and, you know, there's a -- there's a lot of fighters with a lot of files --

THE COURT: Uh-huh.

MR. COVE: -- one of the things we'll talk about further with --

THE COURT: Okay.

MR. COVE: -- with them.

THE COURT: Just being realistic, 30 days is about the soonest turnaround I can give you anyway,

MR. COVE: Okay.

THE COURT: And, consistent with being able to read your joint status report and be prepared and address any issues that you have. So, I will let this for a status and dispute resolution conference in 30 days, and, by all means, please continue to meet and confer and decide what you think the most efficacious way is of pursuing discovery and prioritizing what it is that you need. And I know you're talking about perhaps

sample files or a representative sample of files and which custodians you're going to select; you're talking about organizational charts and who was who in terms of days of yore before you have a formal chart, and so forth. So, you have a lot of legwork to do.

Have you had the detailed discussions about the ESI in terms of who has what type of ESI and what types of devices and so forth that -- so you have a common understanding on that?

MR. COVE: We -- we've had several discussions on that, and some -- some -- some parts of those discussions are dependent on, hopefully, reaching some limits as to who has to be searched, because figuring out --

THE COURT: No, I know that's an ongoing --

MR. COVE: Yeah.

THE COURT: -- concern, but devices are often an issue as well, not just the company servers or the company individual laptops, but the blacktops and the black -- or the Blackberry's, rather, and the -- and all that kind of stuff --

MR. COVE: Yeah. Yes.

THE COURT: -- that people sometimes don't think about until way down the line when it's a problem.

MR. COVE: We have preserved -- right. Zuffa has preserved that material. We have agreed that voice -- the voicemail need not be preserved, and that was in our ESI

(indiscernible), but I think we're --

MR. DELL'ANGELO: Right. So -- all that's correct. I think one of the gating issues for us up to this point is not having a clear picture on, you know, who all of the custodians may be, what devices they have, that sort of thing. So, kind of absent that, I think we have more work to do until we really understand what it is --

THE COURT: Very well.

MR. DELL'ANGELO: -- that we're dealing with.

THE COURT: All right. And you folks are from divergent places of the country. Is there a particular day or time that's better or worse for you in terms of having -- what I would intend to do is probably set a standing discovery and dispute resolution hearing approximately every 30 days, unless you didn't have any problem, in which case I'm happy to vacate it for you, but just to give you a regular schedule so that you could take time out and schedule around that. Have you discussed -- and I don't have to do it right now, but I'm looking at about 30-day intervals, so if you'd like to talk to each other, I know with travel and everything else, and if you have one of your member that would like to appear telephonically, I'm happy to accommodate you in that regard. It's hard for the primary speaker to appear telephonically, but -- do you gentlemen have a day that's better or worse for you in terms of -- gentlemen and counsel? Didn't mean to

slight you there.

MR. DELL'ANGELO: So --

THE COURT: I was just seeing ties.

MR. DELL'ANGELO: Sorry, your Honor. There -- I mean, there are a couple of days with respect to the next conference that I can identify for the Court that would be problematic, which would be October 26, 27, and November 3rd. And I think, as a general matter, to the extent that we have East Coasters traveling out, you know, it would be preferable if we could avoid doing it on a Friday if it's late in the afternoon, because otherwise it leaves us taking the redeye home.

THE COURT: It's --

MR. DELL'ANGELO: But, you know, we'll certainly accommodate that if that's --

THE COURT: I'm too old for redeyes myself, so I fully appreciate that.

MR. DELL'ANGELO: -- what's convenient for the Court. I mean, we're happy to do it if need be, but ideally would prefer not.

MR. COVE: Yeah, I'd -- I'd like to consult with Mr. Isaacson on that, and I -- I come from California, I'm in the Oakland office, but Mr. Isaacson has to make -- trek across the country.

THE COURT: All right. Why don’t you folks talk

among yourselves and then see if you have a preference for a date and a.m. or p.m. My normal civil calendar to hear motions is on a Tuesday, so that probably wouldn't work; I'd rather give you your specific time slot. And, then, confer with Mr. Miller and see if we can't give you a -- Mr. Miller would be my courtroom deputy -- and we'll give you a date and time that's mutually agreeable to you.

MR. COVE: Okay.

THE COURT: Okay? And, then, what I typically do is require you to give me the joint status report two or three days ahead of the hearing. That gives you an opportunity to talk up to the relatively last minute, and it gives me enough time to actually pore over it and read it. So, with that in mind, you can talk about scheduling and what -- what works in terms of dates and times. Okay?

MR. DELL'ANGELO: If I could ask one follow-up question --

THE COURT: Yes, sir.

MR. DELL'ANGELO: -- with respect to the next status. So, in the event that it wasn't sufficiently clear from my articulation of kind of the notion that I had about how to handle the next status in light of the denial of the motion to dismiss, my hope was, so that, you know, we could spend this time to try to meet and confer and reach a global resolution and just identify what issues, if any, we can't agree on, and

the hope was to then present them in advance of the status so we could get them resolved, given that those issues might be somewhat more complicated. Hopefully, there are, you know, few, if any. At that point we'll --

THE COURT: My intention is to -- you tell me what you can agree on, and we rock and roll and I decide at the hearing.

MR. DELL'ANGELO: Okay.

THE COURT: And I try, to the best of my ability, to give you a decision right there at the hearing. Sometimes things intervene and I have other things that I have to address and I have to put you, you know, aside for a bit, but that's the intention of having these status and dispute resolution conferences is to give you a decision as you go and to allow you as much time as possible to try to work it out, but those things that you can't work out I decide.

MR. DELL'ANGELO: Very good. Thank you, your Honor.

THE COURT: Okay?

MR. COVE: Thank you, your Honor.

THE COURT: Thank you, Counsel. It's been a pleasure. Thank you. We're adjourned.

THE CLERK: All rise.

(Proceeding was adjourned at 2:48 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

October 7, 2015

TONI HUDSON, TRANSCRIBER